STEVEN PANGIRAJA & ORS

v.

PP

COURT OF APPEAL, PUTRAJAYA
AZAHAR MOHAMED JCA
MOHTARUDIN BAKI JCA
HAMID SULTAN ABU BACKER JCA
[CRIMINAL APPEALS NO: J-05-193-07-2011,
J-05-194-07-2011, J-05-196-07-2011,
J-05(S)-206-07-2011, J-05-207-07-2011]
18 APRIL 2014

CRIMINAL LAW: *Kidnapping Act 1961 - Section 3 - Offence of kidnapping - Grounds of appeal - Whether identification parade flawed and defective - Whether trial judge failed to warn himself against accepting evidence of 13 year old victim - Whether test of maximum evaluation and beyond reasonable doubt rightly applied - Whether trial judge erred in law and fact in sentencing - Whether appellate interference warranted - Kidnapping Act 1961, s. 3*

CRIMINAL PROCEDURE: *Appeal - Appeal against conviction and sentence - Offence of kidnapping - Grounds of appeal - Whether identification parade flawed and defective - Whether trial judge failed to warn himself against accepting evidence of 13 year old victim - Whether test of maximum evaluation and beyond reasonable doubt rightly applied - Whether trial judge erred in law and fact in sentencing - Whether appellate interference warranted - Kidnapping Act 1961, s. 3*

EVIDENCE: *Witness - Child witness - Preliminary inquiry to test competency of witness - Whether required under law - Whether witness was 'child of tender years' - Whether trial judge considered competency issues relating to 'sufficient intelligence' - Evidence Act 1950, ss. 118 & 133A*

The appeals were in relation to five appellants who were convicted and sentenced for an offence under s. 3 of the Kidnapping Act 1961 and punishable under the same section read together with s. 34 of the Penal Code. It was the prosecution's case that the victim ('SP3') had been forcefully dragged in to a car in Johor Bahru and was taken to Kuala Lumpur. Upon receiving the ransom, SP3 was released. The accused persons were arrested and were subsequently identified by SP3 in the

identification parade as well as in the dock. SP3 was 13 years old at the time of incident and 15 years old at the time of giving evidence. The first, second and fifth appellants were sentenced to death, the third appellant was detained under s. 97(2)(b) of the Child Act 2001 ('Child Act') and the fourth appellant was detained at the prison at the pleasure of the DYMM Sultan of Johor, under s. 97(2) of the Child Act. In essence, the issues raised in the appeal by the appellants, *inter alia*, were: (i) the identification parade was flawed and defective; (ii) the trial judge had erred in law and fact in failing to warn himself against accepting SP3's evidence who was 13 years old at the time of the incident; (iii) the trial judge had erred in law and fact in sentencing the appellants; and (iv) *Radhi's* direction (*Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073). It was contended that SP3 and SP10 (SP3's classmate, who witnessed SP3 being dragged into the car) were children and the trial judge did not conduct a preliminary inquiry to test the competency of the witnesses as required under ss. 118 and 133A of the Evidence Act 1950 ('EA').

Held (dismissing appeals; affirming conviction and sentence) Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) There is no requirement under the Act to conduct a preliminary inquiry though case laws requires the competency to be tested for child of tender years and not child *per se*. SP3's evidence had been carefully dealt with according to the law by the trial judge. Section 118 of EA only comes into issue if the court considers that a child of 'tender years' gives evidence. It was difficult to fathom how SP3 and SP10, who were school going and aged 15 at the time of giving evidence, would fall within the definition of 'tender years' as per s. 118 of EA. (para 13)

(2) There were sufficient materials in the judgment to satisfy that the court had taken cognizance of s. 133A. However, the evidence of SP3 and SP10 did not fall within the definition of 'child of tender years' on the factual matrix of the case. The trial judge had been extra cautious and was fully aware of the competency issues relating to 'sufficient intelligence', *etc*. (para 13)

(3) The relevant appellants had been identified before the trial as well as in the dock by the 'victim'. This was not a case of 'fleeting glance' and thus, there was no merit on the issue of identification raised by the appellants. (para 14)

(4) The charge against the appellants was anchored within s. 34 of the Penal Code which requires the relevant appellants to create a reasonable doubt in the mind of the judge. However, the appellants had not created any reasonable doubt in the mind of the trial judge. Hence, there was no reason, on the facts or law, for the court to intervene in the trial judge's reasoning. (paras 14 & 15)

(5) There was sufficient material to support the charge and the view taken by the trial court on the relevant issues was reasonable view of the evidence on record, and the court had followed *Radhi's* direction and had rightly applied the maximum evaluation and beyond reasonable doubt test. In the circumstances, it was a safe decision, thus appellate intervention was not necessary. (paras 17 & 18)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan-rayuan ini adalah berkaitan dengan lima orang perayu yang disabitkan dan dijatuhkan hukuman bagi satu kesalahan di bawah s. 3 Akta Penculikan 1961 dan boleh dihukum di bawah seksyen yang sama dibaca dengan s. 34 Kanun Keseksaan. Adalah kes pihak pendakwaan bahawa mangsa ('SP3') telah diheret masuk secara paksa ke dalam sebuah kereta di Johor Bahru dan dilarikan ke Kuala Lumpur. Setelah menerima wang tebusan, SP3 dilepaskan. Tertuduh-tertuduh telah ditangkap dan kemudian dicamkan oleh SP3 dalam satu kawad cam dan juga dalam kandang saksi. SP3 berumur 13 tahun semasa kejadian dan 15 tahun semasa memberikan keterangan. Perayu-perayu pertama, kedua dan kelima dijatuhkan hukuman mati, perayu ketiga ditahan di bawah s. 97(2)(b) Akta Kanak-Kanak 2001 ('Akta Kanak-Kanak') dan perayu keempat ditahan di penjara atas perkenan DYMM Sultan Johor, di bawah s. 97(2) Akta Kanak-Kanak. Pada asasnya, isu-isu yang dibangkitkan oleh perayu-perayu, antara lain, adalah: (i) kawad cam tersebut mempunyai kelemahan dan adalah cacat; (ii) hakim bicara telah terkhilaf di sisi undang-undang dan fakta apabila tidak mengingatkan dirinya terhadap penerimaan keterangan SP3 yang berumur 13 tahun pada masa kejadian; (iii) hakim bicara terkhilaf dari segi undang-undang dan fakta dalam menjatuhkan hukuman kepada perayu-perayu; dan (iv) arahan *Radhi* (*Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073). Dihujahkan bahawa SP3 dan SP10 (rakan sesekolah SP3, yang

menyaksikan SP3 diheret ke dalam kereta) adalah kanak-kanak dan hakim bicara tidak menjalankan siasatan awal untuk menguji kompetensi saksi seperti yang diperlukan di bawah ss. 118 dan 133A Akta Keterangan 1950 ('Akta').

Diputuskan (menolak rayuan-rayuan; mengesahkan sabitan dan hukuman)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Tidak ada keperluan di bawah Akta untuk menjalankan siasatan awal walaupun undang-undang kes memerlukan kompetensi diuji bagi kanak-kanak yang masih mentah dan bukan kanak-kanak *per se*. Keterangan SP3 telah dipertimbangkan secara teliti menurut undang-undang oleh hakim bicara. Seksyen 118 Akta hanya menjadi isu jika mahkamah mendapati bahawa seseorang kanak-kanak yang 'masih mentah' memberikan keterangan. Adalah sukar untuk menduga bagaimana SP3 dan SP10, yang masih bersekolah dan berumur 15 tahun semasa memberikan keterangan, akan terangkum dalam tafsiran 'masih mentah' seperti yang diperuntukkan oleh s. 118 Akta.

(2) Terdapat material yang mencukupi dalam penghakiman untuk memuaskan bahawa mahkamah telah mengambil kira s. 133A. Walau bagaimanapun, keterangan SP3 dan SP10 tidak terangkum dalam tafsiran 'kanak-kanak yang masih mentah' atas matriks fakta kes. Hakim bicara telah memberi lebih perhatian dan menyedari sepenuhnya isu-isu kompetensi berkaitan dengan 'kebijakan yang mencukupi', dan lain-lain.

(3) Perayu-perayu yang relevan telah dicamkan sebelum perbicaraan dan juga dalam kandang saksi oleh 'mangsa'. Ini bukan kes 'sekilas pandang' dan dengan itu, tidak ada merit dalam isu pengecaman yang dibangkitkan oleh perayu-perayu.

(4) Pertuduhan terhadap perayu-perayu terangkum dalam s. 34 Kanun Keseksaan yang memerlukan perayu-perayu relevan membangkitkan keraguan munasabah dalam minda hakim. Walau bagaimanapun, perayu-perayu tidak membangkitkan apa-apa keraguan munasabah dalam minda hakim bicara. Maka, tidak ada sebab, atas fakta atau undang-undang, bagi mahkamah campur tangan dalam alasan hakim bicara.

(5) Terdapat material yang mencukupi untuk menyokong pertuduhan dan pertimbangan yang diambil oleh mahkamah bicara atas isu-isu yang relevan adalah pendapat munasabah berdasarkan keterangan atas rekod, dan mahkamah telah mematuhi arahan *Radhi* dan telah dengan betul mengguna pakai ujian penilaian maksimum dan melampaui keraguan munasabah. Dalam keadaan tersebut, ia adalah keputusan yang selamat dan campur tangan peringkat rayuan tidak diperlukan.

Case(s) referred to:
Aung Thun & Anor v. PP [2013] 1 LNS 985 CA ***(refd)***
Chin Kek Shen v. PP [2013] 7 CLJ 435 CA ***(refd)***
Nafar Sheikh v. Emperor [1914] ILR 41 Cal 406 ***(refd)***
Tong Kam Yew & Anor v. PP [2013] 4 CLJ 470 CA ***(refd)***

Legislation referred to:
Child Act 2001, s. 97(2)(b)
Evidence Act 1950, ss. 118, 133A
Penal Code, s. 34

For the 1st appellant - Mohd Radzi Yatiman; M/s Rahim & Lawrnee
For the 2nd appellant - S Vijaya Retnam; M/s Veizay & Company
For the 3rd appellant - R Subash (Suzanawati Ismail with him); M/s Gobind Singh Deo & Co
For the 4th & 5th appellants - GSP Ravindran; M/s GSP Ravindran & Co
For the prosecution - Farah Ezlin Yusop Khan; DPP

[Editor's note: For the High Court judgment, please see PP lwn. Steven Pangiraja & Yang Lain [2012] 3 CLJ 1016.]

Reported by S Barathi

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The five appellants' appeals against conviction and sentence in respect of charge relating to kidnapping came up for hearing on 10 September 2013 and on the same day we heard the appeals and dismissed the same. My learned brothers Azahar bin Mohamed JCA and Mohtarudin bin Baki JCA have read the draft judgment and approved the same. This is our judgment.

Preliminaries

[2] The prosecution had charged nine persons. These appeals relate to the five persons who were convicted and sentenced.

[3] The case for the prosecution is quite straightforward. The victim was forcefully dragged into a car in Johor Bahru and taken to Kuala Lumpur and upon receiving the ransom the victim was released and the victim found her way home to tell the story. The police managed to arrest the accused persons and subsequently the victim had identified them in the identification parade as well as in the dock.

[4] The victim was 13 years old at the time of incident and was 15 years old at the time of giving evidence and was also school going. The learned trial judge had written a 31 pages of judgment and another judgment of 53 pages setting out the facts and grounds in detail. It is no less than a speaking judgment. We are of the considered view that judicial time should not be spent to re-agitate the facts which has been dealt with *in extenso* by the learned trial judge save to deal with the core issues.

[5] In the instant case: (i) the first appellant Steven a/l Pangiraja (Appeal No: J-05-193-07-2011) was sentenced to death; (ii) second appellant Vicknes a/l Ponniah (Appeal No: J-05-194-07-2011) was sentenced to death; (iii) third appellant Ragesh a/l Dhanabalu (Appeal No: J-05-207-07-2011) was detained under 97(2)(b) of Child Act 2001; (iv) fourth appellant Saravanen a/l Mariapan (Appeal No: J-05(S)-206-07-2011) was detained at the prison at the pleasure of the DYMM Sultan of Johor under s. 97(2)(b) of Child Act 2001; (v) fifth appellant Ravikumar a/l Ramar (Appeal No: J-05-196-07-2011) was sentenced to death.

[6] The appellants were charged as follows:

> Bahawa kamu bersama-sama seorang lagi yang masih bebas pada 28hb April 2008 jam lebih kurang 11.20 pagi di Jalan Dato' Abdul Hamid, Tampoi, di dalam daerah Johor Bahru, di dalam Negeri Johor Darul Tak'zim, bagi meneruskan niat bersama kamu semua, bagi maksud mendapatkan wang tebusan sebanyak RM500,000.00 telah menahan Shalini A/P Paramasivam (KPT: 950330-01-5686) dengan cara melarikan dan menghalang secara salah Shalini a/p Paramasingam (KPT: 950330-01-5686) dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah Seksyen 3 Akta Culik 1961 dan boleh dihukum di bawah seksyen yang sama dan dibaca bersama dengan Seksyen 34 Kanun Keseksaan.

[7] The first appellant's petition of appeal can be summarised as follows:

(i) The learned judge erred in law and fact in accepting the evidence of PW3 without independent corroboration, as she was at the time of giving evidence was a child. Furthermore, DNA profiling on the steering wheel and gear knob returned negative.

(ii) The learned judge erred in law and fact in accepting PW3's identification of the 1st accused when she failed to testify on the identification parade.

(iii) The learned judge erred in law and fact in accepting PW3's identification in the parade when its procedure was doubtful and defective.

(a) Before the identification parade was conducted, PW15 had left the door opened, raising the possibility that the witness was shown the suspect beforehand.

(b) There was no video to support the identification parade procedure was adhered to.

(c) The 10 participants in the parade were merely based on their identification cards, when it should have been based on similar built and character physically on the day the parade was conducted. Furthermore, PW15 had admitted that there were distinctive differences between the participants of the parade. Hence, the identification parade was defective.

(iv) The learned judge erred in law and fact by dismissing the defence version as an afterthought and a bare denial.

(v) The learned judge erred in law and fact by sentencing the 1st accused to death when life imprisonment was a better alternative as PW3 was not harmed, she was fed, given ticket to return home as well as pocket money of RM100. The 1st accused, at the time was 24 years old who still has a chance at life.

(vi) The long period for interrogation could not be an aggravating factor in sentencing.

[8] The second appellant's petition of appeal can be summarised as follows:

(i) The learned judge erred in law and fact by failing to take into consideration that the identification of the 2nd accused was only from the dock.

(ii) The learned judge erred in law and fact when PW3 could only identify the suspect between no. 5 and no. 6 and no other witness could identify the 2nd accused.

(iii) The learned judge erred in law and fact by failing to warn himself against accepting the evidence of PW3 who was 13 years old at the time of the incident.

(iv) The learned judge erred in law and fact by failing to consider that the only evidence recovered from the 2nd appellant was the earrings, when PW3 was confused as to which accused took the earrings.

(v) The learned judge erred in law and fact by failing to consider that 3 other witnesses at the identification parade, failed to identify the 2nd appellant.

(vi) The learned judge erred in law and fact by failing to decide two legal issues raised during objection against the testimony of PW9.

(vii) The learned judge erred in law and fact by failing to consider that the identification parade was flawed and defective as was decided against the 6th, 7th, 8th and 9th accused persons.

(viii) The learned judge erred in law and fact to consider that the testimony of PW3 needs corroboration.

(ix) The learned judge erred in law and fact by failing to consider that only the first and second elements of section 3 Kidnapping Act were proven against the 2nd appellant.

(x) The learned judge erred in law and fact that there was no common intention proven by the prosecution.

(xi) The learned judge erred in law and fact that the testimony of PW3 was not credible as a child was prone to imagination.

(xii) The learned judge erred in law and fact by sentencing the 2nd appellant to death as there was no evidence of remorse based on the fact that the learned counsel did not seek forgiveness from the victim's family.

[9] The third appellant's petition of appeal can be summarised as follows:

(i) The learned judge erred by failing to decide that the identification parade was flawed and defective.

(ii) The learned judge erred by failing to decide that the identification of the 3rd appellant in Court was unacceptable.

(iii) The learned judge erred by failing to direct his mind to section 91 of Child Act 2001. A

(iv) The learned judge erred by failing to apply his discretion on the options for sentencing, that the learned Judge did not have to punish the 3rd appellant with the capital punishment, even if he was not a child. B

(v) The learned judge erred by invoking sections 97(1) and (2) of child Act against the 3rd appellant.

(vi) The learned judge erred by failing to decide the absence of common intention. C

[10] The fourth and fifth appellants' petition of appeal can be summarised as follows:

(i) The learned Judge erred in law and fact by failing to consider whether all the elements under section 3 of Kidnapping Act 1961 read with section 34 of the Penal Code had been proven. D

(ii) The learned Judge erred in law and fact by deciding the 4th appellants involvement through the testimony of PW19. E

(iii) The learned Judge erred in law and fact by accepting the whole of the testimony of PW3/PW10 without first evaluating the fact that they were children.

(iv) The learned Judge erred in law and fact by accepting the testimony of PW3, a child when she was not subjected to "disequest" even though she testified on two separate days i.e. 27.4.2010 and 28.6.2010. F

(v) The learned Judge erred in law and fact by accepting and taking into consideration the testimony of PW3 on the identification of the 4th appellant in the parade, when she admitted in cross-examination that she was assisted by the police with leads to the identification of the appellant. G

(vi) The testimony of PW3 was not corroborated.

(vii) The testimony of PW3 was contradictory. H

(viii) The learned Judge erred in law and fact by deciding that the prosecution had succeeded in proving its case beyond reasonable doubt by the evidence of PW3, PW5, PW10 and PW19, without giving due consideration to the testimonies of the other witnesses. I

(ix) The learned Judge erred in law and fact by accepting and considering the evidence of PW5 on the identification of the appellant in the parade when in cross examination, PW5 admitted that the participants in the identification parade had distinguishing features as to age, looks and physical shapes.

(x) PW3, PW5 and PW10 admitted in cross-examination that the identification parade was not done according to the correct procedure. Evidence shows that the identification parade was not safe.

(xi) The learned Judge erred in law and fact by deciding that the appellant was the one who made 10 calls to PW5 to demand ransom, when there was no evidence of such and ASP Subramaniam a/l Munusamy did not offer any corroborative evidence.

(xii) The learned Judge erred in law and fact by accepting P47 A-K and taking it into consideration when the maker, Durga a/p Paramasivam was not called to testify.

(xiii) The learned Judge erred in law and fact by deciding that the ransom money discovered in the boot of the car at the appellant's house was the ransom money from PW5, when there was no evidence that the money was the same as listed in P47 A-K.

(xiv) The learned Judge erred in law and fact by accepting the identification of the appellant by PW3 and PW5 when the appellants were seated according to the arrangement as charged in Court.

(xv) The learned Judge erred in law and fact in deciding that the appellants were connected to the acts of kidnapping and wrongfully confining PW3 for ransom based on the evidence of PW5 and PW10 where the same never testified to such abduction, restraint or confinement of PW3 by the appellant.

(xvi) Sentence of life imprisonment was more appropriate.

[11] It must be noted that despite lengthy petitions of appeals and comprehensive submissions, the learned counsel for the appellants *inter alia* restricted their submissions to (i) identification; (ii) Child evidence; (iii) sentence; and (iv) *Radhi*'s direction.

[12] The learned Deputy Public Prosecutor has filed a comprehensive submission rebutting all issues of complaint.

[13] In the instant case it was contended before us the evidence of SP3 (the victim) and SP10 (her classmate) who witnessed the victim being dragged into the car were children and the learned trial judge did not conduct a preliminary inquiry to test the competency of the witness as required under ss. 118 and 133A of the Evidence Act 1950 ('EA 1950'). We do not find any merit in this issue. Our reasons *inter alia* are as follows:

(a) There is no requirement under the Act to conduct a preliminary inquiry though case laws requires the competency to be tested for child of tender years and not child *per se*. The learned judge had carefully dealt with the evidence of the child according to law, and this is reflected in many parts of the judgment. (See paras. 38, 39 and 40 at pp. 44 to 46 A/R).

(b) Section 118 of the EA 1950 only comes into issue if the court considers that a child of 'tender years' gives evidence. It is difficult to fathom how SP3 and SP10 who were school going and aged 15 years at the time of giving evidence will fall within the definition of 'tender years' stated in s. 118 of the EA 1950 which reads as follows:

> 118. All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

(c) Support for the above proposition is found in a number of Indian cases which had dealt with similar provision *pari materia* to s. 118 of the EA 1950. For example, in *Nafar Sheikh v. Emperor* [1914] ILR 41 Cal 406 Justice Mookerjee had this to say:

> Reliance has been placed upon the decision in *Fakir v. Emperor* 1907 (11) C. W. N. 51 which, it has been urged, is authority for the proposition that it is obligatory upon a Judge to test the capacity of a witness of tender years by appropriate questions and to form his opinion as to the competency of such a witness before the actual examination commences. It may be conceded that there are expressions in the judgment in the case mentioned which tend to support this broad statement, but, in my opinion, the proposition thus widely formulated is not justified by the terms of s. 118, Evidence Act. That section lays down that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them or from giving rational answers to these questions by tender years.

> The legislature has not prescribed an inflexible rule of universal application to the effect that before a child of tender years is questioned, the Court must by a preliminary examination test his capacity to understand and to give rational answers and must form an opinion as to the competency of the witness before the actual examination commences. In fact the case of *Reg v. Whitehead* (35) L.J.M.C. 186 shows that the incompetency of a witness may very well appear in the course of his examination-in-chief and that the evidence of a witness so found to be incompetent may at that stage be withdrawn from the jury. The true rule on the subject is concisely stated by Brewer, J., in *Wheeler v. United States* (159) U. S. 523 in these terms: "The decision of this question (whether the child witness has sufficient intelligence) rests primarily with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record, the decision of the trial Judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous." The mere circumstance that the Sessions Judge did not interrogate the witnesses before their examination began with a view to test their capacity does not, in the view I take of the true effect of S. 118, Evidence Act, invalidate the trial. But in the present case there are circumstances which, in my opinion, rendered it plainly desirable that such a course should have been pursued.

(d) Section 133A of the EA 1950 also relates to 'child of tender years'. Though there are sufficient material in the judgment to satisfy that the court has taken cognisance of s. 133A, but again the evidence of SP3 and SP5 will not fall within the definition of 'Child of Tender Years' on the factual matrix of the instant case. In the instant case the learned judge has been extra cautious and was fully aware of the competency issues relating to 'sufficient intelligence', etc.

[14] We do not also find any merit on the issue of identification. This is not a case of 'fleeting glance'. The relevant appellants had been identified before the trial as well in the dock that too by the 'victim'. And the charge is anchored with s. 34 of the Penal Code. This will require the relevant appellants to talk about their innocence and create a reasonable doubt in the mind of the judge. That is the present position of the law where s. 34 is relied on by the prosecution. In *Aung Thun & Anor v. PP* [2013] 1 LNS 985; [2014] 1 MLJ 784, the Court of Appeal through Hamid Sultan bin Abu Backer JCA on common intention had this to say:

For section 34 to be made applicable for a charge of murder, it is sufficient for the prosecution to show that two or more persons were involved without necessity of booking all the persons involved in the murder. It is sufficient if the common intention of committing the crime is attributed to more than one person and the crime is the result of joint act or executed at various stages by different persons to complete the offence. For example, in a kidnapping case where one person abducts the victim and another ask for ransom money though both persons may not have been at the same place. The threshold for the prosecution to satisfy is very low and has nothing to do with the specifics stated in section 34. [see *Zabar Singh v. State* AIR 1957 SC]. Learned author's to *Nandi, Criminal Ready Referencer*, 3rd ed. Vol. 3 at page 116 on common intention relating to homicide has this to say:

Common intention to kill may be inferred from the conduct of the assailants, the entire chain of circumstances and the sequence of events, keeping in mind that the common intention to kill may not be present to start with but may develop later – *Venkatchala v State* Cri.A.No. 16 of 195 decided by the Supreme Court on 22.1.1958. To infer common intention the time and place of the murder, the weapon carried by the accused, their relationship *inter se* and their concerted action in the wake of the murder are all relevant – *Lalu v State* AIR 1974 SC 2118: 1974 Cr LJ 1393: (1975)3 SCC 273; see also *B.N. Srikantiah v State* AIR 1958 SC 672: 1958 Cr LJ 1251; *Nitya Sen v State* (1978)2 SCC 382: 1978 Cr LJ 481; *Gurdas Singh v State* AIR 1975 SC 1411: 1975 Cr LJ 1218: (1975) 4 SCC 490.

It may, in many cases, be difficult to decide whether the criminal act has been done by several persons in furtherance of the common intention of all. *But, once it is decided that the act is so done by a number of persons (more than one person) in furtherance of the common intention of all, the legal position that results is that each person shall be held to have committed the entire criminal act – Matiullah v State* AIR 1965 SC 132: (1965) 1 Cr LJ 126. (emphasis added)

[15] In the instant case, the appellants' story had not created any reasonable doubt in the mind of the learned trial judge. And we do not find any reason on the facts or law to intervene in the learned judge's reasoning on this issue.

[16] Notwithstanding the fact that the learned counsel for the relevant appellants did not go through each and every ground of appeal in the petition of appeal, we have taken the liberty to peruse the complaint as well as the evidence and the grounds. We do not find any merit in the complaint.

[17] It is well settled that it is in the hands of triers of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction as well as sentence. We have perused the evidence in detail and we are satisfied that there are sufficient materials to support the charge and the view taken by the trial court on the relevant issues in our view was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable doubt test. (see *Tong Kam Yew & Anor v. PP* [2013] 4 CLJ 470; [2013] 4 MLJ 888; *Chin Kek Shen v. PP* [2013] 7 CLJ 435; [2013] MLJU 266).

[18] In consequence it is a safe decision and appellate intervention is not necessary. Appeal is dismissed. The conviction and sentence by the High Court is affirmed.

We hereby order so.